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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,430	01/12/2001	Lee R. Bolduc	105-C1	1423

27777 7590 08/27/2003  
AUDLEY A. CIAMPORCERO JR.  
JOHNSON & JOHNSON  
ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 08933-7003

EXAMINER

ROBERTS, PAUL A

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/759,430

Applicant(s)

BOLDUC ET AL.

Examiner

Paul A Roberts

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 15, 19-27, and 30 is/are rejected.
- 7) ☒ Claim(s) 16, 18, 28 and 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2, 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 17 is apparently missing in the application. Upon allowance, the examiner will renumber the claims.
2. Claim 25 is missing the beginning of the claim. The examiner will examine claim 25 of the first preliminary claim amendment.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 14, 15, 19-27, and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Bolduc et al. "Bolduc" 2003/0114867. The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

4. Regarding claims 14 and 30, the surgical-clip method of anastomosis disclosed by Bolduc meets the limitations of claims 14 and 30. The anastomosis device (the clip) can be

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made of nitinol, which is a well-known biasable material (paragraph 62 and 80). The clip is used for anastomosis. The clip is inserted into the second tissue (the horizontal lumen) in the unbiased configuration and then released to clamp the vessel. Element 28 is the tissue-securing element.

5. Regarding claim 15, the limitations of claim 15 are anticipated because the clip does not penetrate the second vessel when the tissue-securing element is in the biased configuration; rather, the clip penetrates the second vessel when the clip is in the biased configuration.

6. Regarding claim 19, the tissue securing first end 28 and the second end 36 of the tissue securing elements compress the tissue.

7. Regarding claims 20 and 21, figure 4a shows the first tissue being everted. This is done prior to the insertion of element 28 into the second tissue (see paragraph 60).

8. Regarding claims 22-25, figure 4 shows the vessel being everted more than 90 degrees. Thus the steps of everting the tissue less than 90 degrees and 90 degrees are also anticipated because everting a tissue more than 90 degrees requires one to (at some instant in time) evert the tissue at an angle less than 90 degrees.

9. Regarding claim 26, the inner surface of the first vessel is compressed against the outer surface of the second vessel.

10. Regarding claim 27, figure 4 shows the process of inserting element 28 through the outside of the vessel towards the inside of the vessel.

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*Allowable Subject Matter*

11. Claims 16, 18, 28, & 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claim 16 requires the clip to be in the unbiased position before entering the second lumen. Bolduc does not disclose this.

13. Claims 18, 28, and 29, Bolduc does not disclose a hub with a hole in it.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 2002/0151914 Gifford III et al. disclosure of anastomosis and the use of nitinol.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A Roberts whose telephone number is (703) 305-7558. The examiner can normally be reached on 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on 703-308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Paul Roberts

*John M. Woo*  
Primary Examiner